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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,	
Plaintiff and Respondent,	G050619
v.	(Super. Ct. No. 10NF1793)
ARTURO ESCAMILLA,	O P I N I O N
Defendant and Appellant.	

Appeal from a judgment of the Superior Court of Orange County, Craig E. Robison (Retired judge of the Orange Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) and Sheila F. Hanson, Judges. Affirmed in part, reversed in part and remanded.

Gregory L. Cannon, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Eric A. Swenson, Lynne

G. McGinnis, and Kristine A. Gutierrez, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

A jury convicted Arturo Escamilla of seven counts of committing lewd acts on a child under age 14. (Pen. Code, § 288, subd. (a); all statutory references are to the Penal Code unless noted.) The jury also found he committed the offenses against more than one child. (§ 1203.066, subd. (a)(7) [precluding probation]; § 667.61, subd. (c) [imposing 15-year to life term].) Escamilla contends the trial court erred by excluding evidence that one of the victims, Z.T., had applied for a U Nonimmigrant Status Certification (U Visa), which grants a victim of specified crimes the opportunity to reside and work in the United States, and to apply for permanent status, if the victim cooperated with law enforcement. He also argues his conviction on count 10 (victim Z.T.) violated his rights under the double jeopardy clauses of the federal and state Constitutions. Finally, he requests an independent review of sealed school records reviewed by the trial court during an in camera hearing to determine whether additional information should have been disclosed to the defense. For the reasons expressed below, established double jeopardy law requires reversal of the count 10 conviction. We remand for resentencing.

I

FACTUAL AND PROCEDURAL BACKGROUND

In 2010, Escamilla was married to I.E. I.E. had several siblings, including sisters A.S. and L.T. A.S. and her family, including daughter Melissa S. (born July 2002), lived in the rear portion of an Anaheim duplex. L.T. and her family, including L.T.'s daughter J.S. (born January 1993), occupied the front unit. A.S.'s sister-in-law, M.C., had two daughters, including Z.T. (born January 1994). M.C. also cared for a granddaughter, Kimberly T. (born May 2002).

1. *Melissa S. – Counts 1-4*

Melissa asserted Escamilla touched her inappropriately on four occasions, the first time when she was seven years old. On the third occasion, when she was eight, he placed her hand on his penis over his clothing and moved her hand. In April 2010, he touched her vagina over her clothing during a party at her home. In early June 2010, Melissa told her mother, A.S., that Escamilla had touched her breasts and vagina on several occasions. A.S. alerted authorities and also spoke to her sisters, L.T. and A.S., about the molestations.

Melissa told a child abuse services team (CAST) interviewer Escamilla pulled down her pants, laid her back on a bed, touched her vagina under her clothing, and touched her buttocks outside her underwear. When he tried to remove her underwear, she pulled up her pants and ran away. Another incident occurred during a party. Escamilla asked her for a glass of water and then tried to pull down her pants and kiss her buttocks when they were in the kitchen. On another occasion, she was playing with her cousin in Escamilla's backyard, Escamilla put his hand inside her underwear, grabbed her buttocks, unzipped his pants, and placed Melissa's hand on his penis. She described a fourth incident in Escamilla's bedroom when he pulled down her pants and touched her vagina and buttocks. He also touched her on two other occasions, once when they were celebrating a cousin's birthday and once when Escamilla had been invited over for a meal.

2. *J.S. – Counts 6-7*

Escamilla's wife, I.E., babysat her niece, J.S., in their home on weekdays beginning when J.S. was around five years old. J.S. asserted Escamilla touched her inappropriately more than once when she was between eight and ten years old. While "tickling" her, he brushed his hands across her vagina and breasts over her clothing. He told her not to tell I.E. After A.S. told L.T. about Melissa's assertions in June 2010, L.T.

spoke with J.S., who told her mother Escamilla had touched her breasts. J.S. later disclosed the abuse to a social worker and a police officer.

3. *Z.T. – Count 10*

Z.T. (born January 1994) testified Escamilla touched her bottom and vagina over her clothing on nine different occasions. He also touched her breasts five or six times over her clothing. The touching occurred when she was in the yard when there were no other adults present. At least one of the incidents occurred when she seven or eight years old. Z.T. disclosed the abuse to her mother M.C. after she heard what happened to other family members.

Other Testimony

The jury also heard testimony concerning M.C.'s granddaughter Kimberly T. She testified and told a CAST interviewer Escamilla touched her inappropriately during her eighth birthday party in May 2010. While she was jumping in a bounce house, Escamilla leaned in and put his hands under her dress and underwear and touched her skin, apparently on her vagina and buttocks. The jury could not agree whether Escamilla committed this offense (count 8), and the court later dismissed the charge on the prosecution's motion.

Defendant's Statements

Escamilla told a police officer in June 2010 he touched Melissa when he was playing with her in his backyard, about 15 days before the interview. He conceded he may have touched her "private parts" inadvertently while swinging her around by the hand and foot, and also admitted it was possible his hand slipped and brushed against her vagina as he set her down. He explained the touching might have occurred because he was dizzy, but he denied touching Melissa during parties he had attended at her home or that he kissed her other than on the cheek. He denied making Melissa touch him. Later during the questioning, Escamilla stated "it seemed easy touching the little girl but I had some beers in me . . . . But no . . . it wasn't a lot of times." He began crying, claimed he

was not sick, and it only occurred one time. He "was kind of drunk" and "it seemed easy . . . to get my hand in there. That's what it was." He admitted touching Melissa's vagina for about 30 seconds under her clothing. The incident occurred in the kitchen, he was drunk, and he regretted his mistake. He did not recall, and then denied, pulling down Melissa's pants and kissing her bottom. He denied touching Melissa's vagina in the backyard or forcing her to put her hand on his penis.

A clinical psychologist testified Escamilla scored low on intelligence tests, although he was not intellectually or developmentally disabled. Escamilla's wife and daughters provided character evidence he was a loving family man and never touched his grandchildren inappropriately.

Following a trial in 2014, the jury convicted Escamilla as noted above. In August 2014, the trial court sentenced Escamilla to three consecutive terms of 15 years to life (counts 1, 6 and 10) and four concurrent terms of 15 years to life (counts 2, 3, 4 and 7).

II

DISCUSSION

A. *The Trial Court Did Not Abuse Its Discretion or Violate Escamilla's Constitutional Rights by Excluding Evidence Z.T. Applied for a U Visa*

Escamilla contends the trial court violated his right to present a defense and to confront and cross-examine witnesses by excluding evidence Z.T. applied for a U Visa. Escamilla reasons that we must reverse all the convictions, not just the conviction based on Z.T.'s testimony, because the other victims and their families must have known about Z.T.'s application. We conclude the court did not abuse its discretion in excluding the evidence under Evidence Code section 352. The trial court conducted a pretrial hearing (Evid. Code, § 402) to determine whether the defense could introduce evidence Z.T. and her family had applied for a U Visa to demonstrate Z.T. had a motive

to lie. A lawyer specializing in immigration law testified a U Visa is a four-year nonimmigrant visa granting a victim of specified crimes, including sexual assault, the right to reside and work legally in the United States. Parents and minor siblings can obtain the same benefits where the alleged victim is a minor. After three years, the person may petition for permanent resident status, which can lead to United States citizenship. To qualify for a U Visa, the applicant must obtain certification from a law enforcement or other specified agency that the applicant has cooperated with investigating authorities, although a conviction is not required. The government issues 10,000 U Visas a year. The U Visa process is well known in the immigrant community. Lawyers often provide information about the process in lectures and seminars to community organizations, and advertise on television and radio. The Mexican consulate also provides information about the U Visa program and has a protective services unit for women who are victims of domestic violence.

Z.T. and her mother M.C. testified Z.T. reported the abuse in July 2010. They first learned about the U Visa program some 10 months later when a therapist told M.C. and Z.T. about the program. The Mexican consulate which referred M.C. to an immigration attorney who assisted them in the application process. M.C and Z.T. received information they qualified for a U Visa, but it had not yet been delivered.

The assistant district attorney who handled U Visa certifications in Orange County testified he signed the certification for Z.T.'s U Visa application in April 2011, but had not signed U Visas for her parents.

Defense counsel argued the evidence about the U Visa program gave all the victims a motive to lie because it gave them a path to residency and possibly citizenship, and failure to cooperate at trial would jeopardize their U Visa status. Counsel acknowledged the witnesses testified they did not know about the U Visa program when they made the allegations.

The trial court excluded the evidence under Evidence Code section 352. The court noted the noted the immigration attorney testified he had "never seen a U[-]Visa removed [revoked?]" and "minors don't have to [cooperate]," and "[t]he question is whether there was a report to law enforcement and whether they cooperated in revealing that information, not whether they follow through and ensure[] that the suspect is identified or a suspect is identified. . . . Clearly, there's no evidence that a refusal to testify at this point in time would have any impact on immigration status . . . ."

Addressing relevance and probative value, the court reasoned the inference of motive to lie depended on a jury finding Z.T. and her family knew about the U Visa program prior to Z.T.'s disclosures. But the court stated the immigration lawyer testified most of his advertising was directed at people who were in the custody of immigration authorities. The court also remarked the jury would have to find Z.T. believed she could obtain a benefit by applying for the U Visa. The court noted U Visas were temporary and only 10,000 a year were authorized, which was "not very many . . . ." The court also stated the jury would have to find Z.T. had "some fear of removal." The court stated there was no "evidence that there is a great likelihood of minors being deported or removed," and the court did not "know whether this was [Z.T.'s] only [means] to obtain legal status."

Turning to other considerations, the court noted the Evidence Code section 402 hearing required the testimony of four witnesses and took most of an afternoon, and more extensive testimony would probably occur at trial. The court also found there was a danger of undue prejudice because the victims were illegal immigrants, explaining, "The fact remains, and we see it on a daily basis in our courtrooms and in our community, that there is a strong sentiment against illegal, unlawful immigrants in our community." The court concluded that "in light of all of the missing factors that would need to be present to make the inference that the defense wishes the jurors to make, I believe that any probative value that that evidence has is, in fact, substantially outweighed by the

probability that its admission would necessitate undue consumption of time and that it would result in undue prejudice."

Evidence Code section 352 provides, "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (See *People v. Jones* (2012) 54 Cal.4th 1, 61 [undue prejudice is that which uniquely tends to evoke an emotional bias while having only slight probative value with regard to the issues]; *People v. Waidla* (2000) 22 Cal.4th 690, 724 [evidence is substantially more prejudicial than probative where it poses an intolerable risk to the fairness of the proceedings or the reliability of the outcome].) We review for abuse of discretion a trial court's relevance determination and its decision to exclude evidence under Evidence Code section 352. (*People v. Jablonski* (2006) 37 Cal.4th 774, 821, 824; *People v. Guerra* (2006) 37 Cal.4th 1067, 1113 [trial court ruling will not be reversed unless court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice].)

Here, the trial court acted within its discretion in excluding evidence concerning Z.T.'s U Visa. There was no evidence Z.T. and her family knew of the U Visa program at the time she made her allegations in July 2010. Nothing suggested the family had seen advertising mentioned by the immigration attorney. Nor was there evidence Z.T. or her family faced a threat of adverse immigration consequences or feared removal. Accordingly, the excluded evidence failed to show a motive for *fabricating* the allegations. As far as establishing a motive for *maintaining* the allegations, any relevance was minimal. The district attorney's office had signed off on Z.T.'s U Visa application in April 2011. As the court noted, there was no evidence Z.T.'s continuing cooperation at trial was required, or that Z.T. or her relatives believed cooperation to be required. The court emphasized admission of this evidence would necessitate an undue consumption of

time and presented a substantial danger of undue prejudice. As the Evidence Code section 402 hearing established, testimony addressing immigration law would consume considerable time. Finally, we cannot say the court acted unreasonably in finding there was a substantial danger of prejudice if the jury learned the victim were illegal immigrants.

A trial court's reliance on Evidence Code section 352 to exclude evidence of marginal impeachment value does not violate a defendant's rights. (*Brown, supra*, 31 Cal.4th at p. 545.) "'As a general matter, the ordinary rules of evidence do not impermissibly infringe on the accused's right to present a defense.'" (*People v. Blacksher* (2011) 52 Cal.4th 769, 821.) Thus, "[a]lthough the complete exclusion of evidence intended to establish an accused's defense may impair his or her right to due process of law, the exclusion of defense evidence on a minor or subsidiary point does not interfere with that constitutional right." (*People v. Cunningham* (2001) 25 Cal.4th 926, 999.) Accordingly, the trial court acted within its discretion under Evidence Code section 352 in excluding evidence, and the court's reliance on Evidence Code section 352 to exclude the evidence did not violate Escamilla's constitutional rights.

B. *Retrial on Count 10 Violated Escamilla's Constitutional Right Against Double Jeopardy*

The original information filed in November 2010 charged Escamilla with two counts (counts 10 and 11) of violating section 288, subdivision (a), against Z.T., both committed on or between January 7, 2001 and January 6, 2003. An amended information filed in April 2013 inserted parenthetical information concerning these counts describing count 10 as "(ONE TIME)" and count 11 as "(A DIFFERENT TIME)."

Z.T. testified Escamilla molested her by touching her vagina, buttocks and breasts over her clothing in the backyard of his home. She estimated these incidents occurred on perhaps nine occasions over a one-year period when she was eight or nine years old.

Following trial in May 2013, a jury acquitted Escamilla of count 11, and could not agree on count 10. At the retrial in 2014, during a discussion of jury instructions, the trial court noted Escamilla had been acquitted on count 11 and stated it was "difficult to discern what conduct the defendant would have been acquitted of and what conduct the jury was unable to reach a verdict as to." The court found the issue "problematic" and asked whether there was a double jeopardy problem.

The prosecution noted Z.T. had testified at the first trial Escamilla touched her on nine separate occasions. The prosecutor argued acquittal on the count identified as "A DIFFERENT TIME" in count 11 referred to an offense occurring after the offense identified in count 10. The prosecutor suggested the court could resolve the double jeopardy by instructing the jury it could only base a conviction on count 10 on the first incident.

Defense counsel objected. He noted the information charged the counts using identical language and date ranges other than differentiating by the wording "one time" and "a different time." Counsel argued it was impossible to determine which facts the prior jury used to acquit on count 11.

The trial court ultimately instructed the jury it could convict Escamilla only on the first incident: "You must not find the defendant guilty of lewd act upon a child under 14 in count 10 as to [Z.T.] unless you all agree that the People have proved specifically that the defendant committed that offense, lewd act upon a child under 14, in that there was a first time of touching on or about and between January 7th, 2001, and January 6th, 2003." As noted, the jury convicted Escamilla of count 10.

Escamilla contends the trial court violated his federal and state double jeopardy protections because an earlier jury acquitted him of the same offense now charged in count 10. He argues the trial court erred in concluding count 10's parenthetical description "one time" meant the first jury was instructed it could convict Escamilla on count 10 only if the prosecution proved the "one time" lewd act referred to

the "first touching." Because the instructions in the first trial did not instruct the jury that the alleged "one time" touching in count 10 meant a first touching, we agree the court violated Escamilla's constitutional protections against double jeopardy.

"The double jeopardy provisions of the federal and state Constitutions protect against successive prosecutions for the same offense after acquittal or conviction, and against multiple punishment for the same offense. [Citations.] Double jeopardy includes an issue preclusion component: once an issue of ultimate fact has been resolved in a criminal proceeding, it cannot be relitigated in a subsequent prosecution or retrial. [Citations.] [¶] 'To decipher what a jury has necessarily decided, . . . courts should 'examine the record of a prior proceeding, taking into account the pleadings, evidence, charge, and other relevant matter, and conclude whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration.'" (*Brown v. Superior Court* (2010) 187 Cal.App.4th 1511, 1524 (*Brown*).)[1]

In *Brown*, the information charged the defendant with multiple sexual offenses. Counts one through 13 alleged he committed forcible oral copulation (§ 288a, subd. (c)(2)) against one victim, C.C., on or between the dates of October 1, 2006, and March 8, 2007. C.C. testified the defendant orally copulated him at least 25 times, and he described a few of the incidents in detail. Each incident occurred either in the living room or in C.C.'s bedroom on a day he did not attend school. The verdict forms pertaining to the counts did not specify a particular date or a date range. The jury acquitted petitioner on several counts, convicted him of a lesser included offense on one of the counts, and could not reach a verdict on the other counts. The defendant objected to a retrial on the other counts on the ground double jeopardy precluded retrial of the

[1] The Attorney General does not assert Escamilla's failure to plead once in jeopardy at the outset of the retrial precludes review of the issue on appeal. (See *People v. Bell* (2015) 241 Cal.App.4th 315.)

counts as to which a mistrial was granted. The trial court ruled double jeopardy precluded retrial of all counts except one, count 13, because the prosecutor argued to the jury count 13 pertained to the final incident.

Brown held the constitutional proscription against double jeopardy precluded any retrial because the jury acquitted the defendant of offenses alleged to have been committed within the same date range as count 13, and the prosecutor failed to show none of the acquittals pertained to that offense. (*Brown*, *supra*, 187 Cal.App.4th at p. 1524.) The court stated: "Counts 1 through 13 all alleged violations of the same statute and all were identically pleaded in the generic statutory language. . . . Neither the instructions nor the verdict forms tied any particular count to a particular incident." (*Id.* at pp. 1527-1528.) The court concluded the evidence was uncertain concerning which incidents pertained to the counts the jury acquitted and convicted the defendant, the prosecution bore the burden of proof to establish the charges to be retried involved different offenses than those the defendant already had been convicted or acquitted of committing, and the trial record contained no evidence that showed which counts pertained to which incidents. (*Id.* at p. 1529; see *People v. Smith* (2005) 132 Cal.App.4th 1537, 1547 [retrial prohibited where it was "impossible to determine which facts were found and rejected by the jury in finding defendant not guilty of" other counts].) *Brown* held the prosecutor's closing argument that count 13 pertained to the final incident did not resolve the uncertainty because nothing required the jury to adopt the prosecution's "view of the charges. Neither the instructions nor verdict forms limited count 13 (or any other count) to the events alleged to have occurred on March 8."[2] (*Brown*, *supra*, at pp. 1529-1530.)

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[2] At the first trial in this case, the prosecutor argued: "[C]ount 10 and 11 . . . are for [Z.T.], one time, a different time. She also described many incidents, but we're asking you to find there were at least two. Date of violation, January 7, 2001, to January 6, 2003, when she was seven to eight years old. Again, the time frame just from her date of birth, that's where we got the seven to eight years old."

The Attorney General attempts to distinguish *Brown* because the amended information in this case differentiated between "one time" (count 10) and "a different time" (count 11). The Attorney General argues, "The only reasonable inference from this language is that count 11 referred to an incident occurring subsequent to count 10. Thus, by instructing the jury in [the] second trial that it could only convict [Escamilla] based on the first incident of touching, the court assured that appellant would not be convicted based on the same incident that the jury had found him not guilty of in the first trial (count 11)."

We disagree. As in *Brown*, the information charged the defendant with multiple identical sexual offenses occurring on or between identical dates. The verdict forms pertaining to the counts did not specify a particular date or a date range, nor did it specify some other way differentiate between the counts such as "first time" or "last time." The instructions at the first trial did not provide any basis to conclude the touching denoted "ONE TIME" referred to the first touching.[3] Because the jury acquitted the defendant of an offense (count 11) alleged to have been committed within the same date range as the offense to be retried (count 10), and it is impossible to determine which

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[3] The court instructed the jury the prosecution had presented evidence of more than act to prove Escamilla committed the offenses. The court further advised the jury it could not find Escamilla guilty unless it agreed the prosecution proved Escamilla committed at least one of the acts and agreed which act he committed for each offense, or it agreed the prosecution proved Escamilla committed all of the acts alleged to have occurred during the charged time period and that he committed at least the number of offenses charged.

The prosecutor's argument addressed this unanimity instruction: "[W]e can't have one juror thinking that one incident occurred, another juror thinking another one occurred, and then everyone votes guilty. So it's a protection for the defendant to make sure that everybody is in agreement. [¶] An example, . . . is [Z.T.] [She] . . . said that [Escamilla] had touched her nine to ten times. She couldn't tell you the dates, but she gave you the time frame or the range. [¶] . . . Even though she said nine or ten, we've charged two. So what you need to do is you all need to agree on . . . one of the acts that she described, or . . . we believe he committed all those nine to ten and he committed at least the two that the people have . . . charged . . . ."

facts were found and rejected by the jury in finding defendant not guilty of count 11, the prosecution did not meet its burden of proving the charge to be retried involved a different offense. Count 10 and the special findings associated with it must be reversed.

C. *Review of Subpoenaed School Records*

Escamilla asks us to examine sealed school records of the victims, which his trial lawyer subpoenaed and the trial court reviewed in camera, to determine whether the trial court should have disclosed additional material. (See *Kling v. Superior Court* (2010) 50 Cal.4th 1068, 1074-1075 [in criminal cases the trial court is charged with determining whether there is good cause to disclose confidential records]; see *People v. Mooc* (2001) 26 Cal.4th 1216, 1228 [specifying procedures set for obtaining access to police personnel records set forth in *Pitchess v. Superior Court* (1974) 11 Cal.3d 531]; *People v. Superior Court* (*Barrett*) (2000) 80 Cal.App.4th 1305, 1318 [documents and records in the possession of nonparty witnesses and government agencies other than agents or employees of the prosecutor are obtainable by subpoena duces tecum under section 1326].) The parties do not dispute the trial court correctly reviewed the school records in camera without counsel present, and the court was obligated to release records containing information that would facilitate the ascertainment of the facts and a fair trial. (See *Pitchess*, *supra*, 11 Cal.3d at p. 536.)

On September 23, 2011, before the first trial, Escamilla's trial counsel, Celia Laureles, filed a declaration under seal. Counsel advised the court she had subpoenaed the victims' school records, described the victims' statements, and asserted, based on Escamilla's statements, the victims were not being truthful. She asked the court to review the subpoenaed materials and to provide the defense with records evidencing dishonesty or exaggeration, moral turpitude, and allegations by or against the four girls of improper or offensive conduct, and if such allegations have been made, identifying information for the alleged victims, witnesses or suspects, and anything "documenting descriptions of these five girls of misconduct by [Escamilla] in this case."

The court's minutes reflect Judge Craig E. Robison conducted an in camera, unreported review of four envelopes containing school records for four individuals outside the presence of counsel on September 26, 2011. The minutes note the envelopes contained records from Buena Park, Anaheim, and Fullerton School Districts. After reviewing the records, the court ordered disclosure to the defense of four pages concerning J.S. and 10 pages concerning Z.T., but the court found no discoverable information as to Kimberly T. and Melissa S. The court resealed the records and ordered them "retained by the court pending trial."

Court minutes also reflect that on March 9, 2012, the trial court received an envelope of subpoenaed documents from Katella High School, and documents from Fullerton Joint Union High School, and later received a declaration from Escamilla's new attorney, Richard Carmona. The court reviewed the records and ordered disclosure to the defense of 11 pages concerning Z.T. from Fullerton Joint Union High School District, three pages concerning J.S. from Anaheim Union High School District, and one page concerning T.S. from Anaheim Union High School District. The court found no discoverable information as to Kimberly T. in records from the Buena Park School District.

Minutes dated March 23, reflect the court received documents from Anaheim City School District. The minutes state the court had received the envelope a few weeks earlier, the court reviewed the records, and determined they related to Melissa S. and were "duplicates of records previously received by the court and reviewed in camera earlier this week."

In May 2015, Escamilla filed his opening brief asking this court to review the school records reviewed by the trial court on September 26, 2011. He also filed a motion to augment the appellate record with the documents and materials the court reviewed on September 26, 2011, and on March 21, 2012, as well as trial counsels' declarations. We granted the motion and directed the trial court to transmit a sealed

supplemental clerk's transcript containing the material. The trial court clerk transmitted trial counsel Laureles's September 23, 2011, declaration. But the clerk submitted an affidavit stating she could not locate the documents reviewed by the trial court on September 26 and March 21. The affidavit did not mention trial counsel Carmona's declaration.

In July 2015, Escamilla filed a motion in the trial court for an order granting leave to settle the record concerning the materials considered by trial court during the September 2011 and March 2012 in camera reviews, and Carmona's declaration.

In September 2016, we received from the trial court envelopes containing eight sets of documents totaling 717 pages of school records, 15 pages of which appear to bear Judge Robison's initials. We did not receive Carmona's declaration. We have reviewed the records, which contain student biographical information, disciplinary information, report cards and transcripts, attendance information, academic testing/assessments, special education information, and health information, among other items. None of the records mention Escamilla or the allegations involved in this case, and none of the disciplinary records suggested the victims had been dishonest, exaggerated incidents, or engaged in morally questionable behavior that would undermine the girls' credibility. The court did not err by declining to release additional information.

III

DISPOSITION

Count 10 and the special findings associated with it are reversed. The remaining convictions and findings are affirmed. The matter is remanded for resentencing.

ARONSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

MOORE, J.